

EO-274

SURFACE TRANSPORTATION BOARD
Washington, DC 20423

Office of Economics, Environmental Analysis, and Administration

May 18, 2006

Mr. Mark Wilson
US Fish and Wildlife Service
Montana Field Office
100 North Park, Suite 320
Helena, MT 59601

Re: STB Finance Docket No. 30186 (Sub-No. 3) - Tongue River Railroad Company, Inc. -
Construction and Operation - Western Alignment - Endangered Species Act Section 7
Consultation Process, USFWS Log Number 6MT-06-F02B

Dear Mr. Wilson:

I am writing to you regarding the formal consultation between the Surface Transportation Board (Board) and the U.S. Fish and Wildlife Service (USFWS) in the above-captioned rail line construction proposal. The Board's Section of Environmental Analysis (SEA) submitted a Biological Assessment (BA), dated September, 2005, to USFWS as part of the formal consultation process on Tongue River Railroad Company's (TRRC's) proposed rail construction and operation of the Tongue River Railroad in Rosebud, Custer, and Big Horn Counties, Montana.

To address USFWS's concerns regarding possible impacts to pallid sturgeon at the Miles City Fish Hatchery (MCFH), on February 3, 2006, SEA agreed to an extension of 90 days to the formal consultation period for USFWS to complete its biological opinion. Below, I discuss what has occurred to date, submission of an addendum to the BA, and set forth modified mitigation conditions that we plan to recommend to our decision-maker to be imposed on TRRC should the Board approve the construction proposal. SEA believes that the receipt of this information by USFWS will allow USFWS to concur with the conclusions in the BA and issue its biological opinion.

As a result of continuing concerns by USFWS and the Montana Department of Fish, Wildlife, and Parks (MT DFWP) regarding potential impacts of the proposed rail line construction and operation to the MCFH, consultations between TRRC, USFWS, and the MT DFWP have occurred since the submittal of the BA. These consultations resulted in the development of a plan for monitoring baseline noise and vibration levels at the MCFH, as well as the impacts, if any, that might result from the construction and operation of the Tongue River Railroad. SEA would like to submit, as an addendum to the BA, the plan which was prepared by Womack & Associates, Inc. dated April 13, 2006, titled Miles City State Warm - Water Fish Hatchery - Revised Work Plan for High Resolution Vibration Monitoring, Evaluation of Potential Effects of Tongue River Railroad Construction and Operation, and Potential Mitigation at Miles City Fish Hatchery. We understand from representation made by TRRC that TRRC is committed to implementing this revised work plan.

TRRC and MT DFWP had previously reached agreement on mitigation measures to ensure protection of the water pipelines serving the MCFH and weed control in areas adjacent to the MCFH. The

agreements are reflected as proposed mitigation measures 84 and 85 in SEA's Draft Supplemental Environmental Impact Statement (SEIS) which was served in October 2004. TRRC has agreed to add additional language to mitigation measure 84 in the Final SEIS to protect outgoing water pipelines during construction and operation. The additional language is indicated below, underlined and in bold type:

Mitigation Measure 84 (Protection of MCFH Water Supply Pipelines). As agreed to by TRRC and the Montana Department of Fish, Wildlife and Parks, TRRC shall relocate, as necessary, portions of the water supply pipelines from the Yellowstone River and Tongue River so that each pipeline crosses the rail right-of-way at a right angle or perpendicular to the rail alignment. To ensure structural integrity of the water supply pipelines, the portion of each pipeline lying perpendicular beneath the rail alignment shall be encased in a reinforced concrete pipe (RCP). The RCP shall be of sufficient size to allow for inspection and maintenance of the water supply pipelines. Access to the pipelines beneath the rail alignment shall be provided by installation of reinforced concrete manholes, located on each side of the rail alignment. The RCP manholes shall meet or exceed the American Railway Engineering and Maintenance of Way Association's standard specifications for installation of utilities underneath railway embankments. The design plans for the relocated section of the water pipelines and all associated elements shall be prepared by TRRC and provided to Montana Department of Fish, Wildlife, and Parks for review and approval prior to being constructed. **TRRC shall locate and protect (and replace if harmed) outgoing water pipelines that would impact operations if affected by construction or operation.**

Mitigation measure 85, as shown below, has not changed since the Draft SEIS was served.

Mitigation Measure 85 (Weed Control on MCFH). As agreed to by TRRC and Montana Department of Fish, Wildlife and Parks, TRRC shall use only mechanical means of weed control in its right-of-way adjacent to the MCFH between the points where the rail line crosses Interstate 94 to the connection with the Burlington Northern-Santa Fe Railroad Company main line. If it becomes necessary to utilize herbicides to control noxious weeds along the right-of-way in this area, herbicides will only be used with prior approval from the MT DFWP, as to the type of herbicide, application rate, means of application, wind speed and direction.

SEA has continued to encourage TRRC and MT DFWP to work cooperatively on a mutually acceptable solution to address any remaining concerns involving the hatchery. Mitigation measure 86 encourages the parties to continue their discussions on the remaining issues while this proceeding is moving forward, and requires that TRRC continue to make itself available to consult with MT DFWP for a period of up to six months after the effective date of the Board's final decision on TRRC's application to reach consensus. Mitigation measure 87 requires that TRRC shall adhere to the reasonable mitigation conditions imposed by MT DFWP in any easement granted by the State allowing TRRC to cross the MCFH.

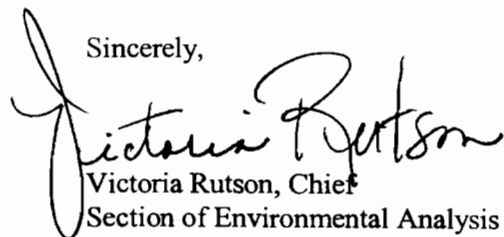
In addition to addressing the above issues of concern related to the MCFH, mitigation measure 26 in the Draft SEIS requires TRRC, prior to beginning construction of each segment and once full access to the site of the railroad right-of-way is obtained, to conduct aerial and ground-level surveys, as appropriate. Surveys shall be conducted to determine if construction of the line will traverse black-tailed prairie dog colonies. The surveys shall also determine the existence of black-footed ferrets. This mitigation measure is designed to determine more precisely the potential for the existence of species of concern and impacts to possible habitat areas. The first paragraph of mitigation measure 26 will include additional language in the Final SEIS requiring that TRRC survey the three black-tailed prairie dog colonies which will be traversed by the proposed railroad but are located on private properties and were not accessible due to landowner

issues at the time the BA was prepared for black-footed ferret occupancy upon receipt of easement or permission to access the property. If a black-footed ferret or its sign is found during this survey, Section 7 Consultation shall be re-initiated with USFWS. TRRC has agreed to the modification to mitigation measure 26 as indicated below, underlined and in bold type.

Mitigation Measure 26 (Data Reconnaissance). Prior to the beginning of construction of each segment and once full access to the site of the railroad right-of-way is obtained, TRRC shall conduct aerial and ground-level surveys, as appropriate. Black-tailed prairie dog surveys shall be conducted to determine if construction of the line will traverse any additional prairie dog colonies. The surveys shall also determine the existence of black-footed ferrets. If black-footed ferrets are discovered, the Montana Department of Fish, Wildlife, and Parks shall be notified. Based on the surveys, TRRC shall develop appropriate means to mitigate the effects of construction and operation of the line on the black-tailed prairie dog and the black-footed ferrets for approval by the Task Force in accordance with the process set forth in Mitigation Measure 14. **Regardless of the timing of construction, once full access to the site of the railroad right-of-way is obtained, TRRC shall survey the three black-tailed prairie dog colonies which will be traversed by the proposed railroad but are located on private properties and were not accessible due to landowner issues at the time the BA was prepared, for black-footed ferret occupancy. If a black-footed ferret or its sign is found during this survey, Section 7 Consultation shall be re-initiated with USFWS.**

SEA understands that USFWS will complete its biological opinion shortly upon receipt of this letter with the addendum information. We are eager to move this process forward and look forward to the opportunity to comment on the draft biological opinion prior to its finalization. Please do not hesitate to contact me or Kenneth Blodgett of my staff by telephone at (202) 565-1554, fax at (202) 565-9000, or e-mail at blodgettk@stb.dot.gov. We appreciate the assistance and cooperation of USFWS throughout the Section 7 consultation process.

Sincerely,



Victoria Rutson, Chief
Section of Environmental Analysis